CHAPTER 14. COMPETITION IN CONTRACTING REQUIREMENTS

14-1. INTRODUCTION

a. Policy. It is Federal law and DOD, DA, and AMEDD policy that the needs of the government will be acquired through full-and-open-competition, using commercial sources to the maximum extent possible. The noncompetitive acquisition of equipment is a matter of concern and intense scrutiny. It is essential that all the following individuals involved in the acquisition of equipment be cognizant of the requirement for competitive acquisition.

(1) Requesters

(2) Logisticians

(3) MEDCASE/SuperCEEP managers

(4) Review and approval authorities at the activity

(5) Review and approval authorities at the RMCs

(6) The USAMEDCOM level

b. MEDCASE/SuperCEEP Requirements. MEDCASE/SuperCEEP requirements must be stated in terms of minimum needs using generic descriptions whenever possible. The use of brand-name descriptions to identify MEDCASE/SuperCEEP requirements shall not constitute endorsement, approval, or acquisition under less-than-full-and-open competition.

c. MEDCASE/SuperCEEP Program Executions. The acquisition of equipment through the MEDCASE/SuperCEEP program shall use competitive procedures to the maximum extent practical regardless of the acquisition source.

(1) For local procurement, activities must comply with the policies and procedures established by the supporting purchasing and contracting office to implement the CICA, see paragraph 14-2. It is essential that MEDCASE/SuperCEEP participants coordinate and work closely with the contracting officer to ensure that acquisition is not unnecessarily delayed due to a failure to comply with CICA requirements.

(2) For acquisitions through the wholesale supply system, it is especially important for the activity to provide detailed descriptive information in the most competitive form possible. The time/distance relationship between the customer, the USAMMA, and the supply source, as well as the tremendous volume of transactions handled by wholesale supply activities, complicates the resolution of problems arising from noncompetitive item descriptions. This can easily result in the cancellation or delay of the acquisition of a needed requirement.

14-2. CICA

The CICA of 1984 substantially changed the policies and the regulations concerning the acquisition of equipment by government activities. While it is not the purpose of this manual to supplement acquisition regulations, an outline of areas that have a significant impact upon the acquisition of MEDCASE/SuperCEEP items is provided as follows:

a. FAR. The FAR established acquisition policy for all branches of the Federal government. The DFARS provides more detailed guidance and implementation procedures for the DOD. The FAR and DFARS implement the CICA.

b. Exceptions to Competitive Procedures. The CICA specifies the circumstances that may permit the use of “other-than full-and-open competition” procedures for acquisition. These exceptions must be justified and approved in accordance with CICA procedures. The two most common exceptions that may apply to MEDCASE/SuperCEEP acquisitions are:

(1) When only one responsible source can provide the required equipment and no other equipment can provide the capabilities that meet the minimum essential needs. This exception requires written justification and approval prior to the award of a contract under less-than-full-and-open competition.

(2) When the equipment is required due to unusual and compelling urgency. If necessary, the written justification for this exception may be provided after the fact; however, offers must be requested from as many potential sources as possible under the circumstances.

c. Competition Advocates. The CICA established the requirement for competition advocates to review acquisitions subject to CICA and challenge those, which unnecessarily and/or unjustifiably restrict competition. A competition advocate review will add 30 to 90 days to the acquisition process.

14-3. METHODS OF DESCRIBING MEDCASE/SUPERCEEP REQUIREMENTS

a. General. The acquisition activity must provide a description of the required item. The law prescribes that requirements will be stated in terms of minimum essential needs. The degree of detail used by the activity in providing a purchase description correlates with the cost of the item. The higher the cost or importance of the features, the greater the detail which must be provided.

b. Performance Specifications. Specifications are the most detailed form of purchase description. Specifications describe in detail the minimum essential features and performance characteristics required for an item of equipment. Technical personnel who are familiar with the equipment or the requirement usually provide specifications. The specifications are further prepared by the contract specialist at the procurement activity to ensure the data is complete and thorough enough for the procurement process. Procurement specifications are drawn from the information provided by the requesting activity (for example., from the EDL are ECs), and from the specification writer's knowledge of the market.

c. Brand Name or Equal. "Brand name or equal" is a shorthand method of describing essential characteristics. When a "brand name" is used to provide

description of the basic function that must be performed, it is generally difficult for the purchasing office to determine what is "equal." Therefore, the activity must also describe the minimum essential characteristics. Brand name references on approved MEDCASE/SuperCEEP requirements do not constitute endorsement or authority for limited competition.

d. Limited Competition. Limited competition arises when an activity specifies the need for features or capabilities that restrict competition. Restrictive characteristics require written justification and must be approved by the appropriate authority. The "appropriate authority" is dependent on the cost of the item.

14-4. JUSTIFICATION FOR OTHER-THAN-FULL-AND-OPEN COMPETITION

a. Requisitions. Requisitions for MEDCASE/SuperCEEP requirements must be accompanied by written justification for acquisition under other-than-full-and-open competition, if limited competition is requested or restrictive essential characteristics or specifications are provided. This is often referred to as a CICA Justification or a Justification and Approval (J&A). The J&A must clearly address the following areas:

(1) Identify the features or specifications which limit competition and efforts made to eliminate restrictions for this and future requirements.

(2) Provide a clinical rationale for the essentialness for each feature or specification that limits competition. A clinical rationale must explain the clinical application of the restrictive essential characteristics.

(3) Identify the impact if those features or essential characteristics are not met.

b. Justification Statement. The CICA justification/J&A must include the following statement signed by the clinical/health care professional initiating the requirement:

> *"I certify that the information contained in this justification supports the government's minimum essential requirements and that the statements contained herein for other-than-full-and-open competition are accurate and complete."*